

Fair Political Practices Commission
MEMORANDUM

To: Chairman Randolph, Commissioners Blair, Downey, Huguenin and Remy

From: Theis Finlev, Executive Fellow
John Wallace, Assistant General Counsel
Luisa Menchaca, General Counsel

Date: March 8, 2005

Subject: Pre-notice Discussion of Amendments to Regulation 18705.5 - Materiality Standard: Economic Interest in Personal Finances.

I. Executive Summary

Public officials are prohibited from participating in governmental decisions that may have a material financial effect on their economic interests, including the economic interest that every public official has in his or her personal finances. In general, a decision affecting the governmental salary of an official or his or her spouse does not give rise to a conflict of interest unless the decision has a unique personal financial effect on the official or his or her spouse. According to regulation 18705.5, which establishes the materiality standard for personal finances effects, the financial effects of a public official's decision are not material, and thus are not disqualifying interests, unless the decision is to hire, fire, promote, demote, suspend without pay, take other disciplinary action with financial sanction, or set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position.

Staff has identified two issues that are not addressed by the regulation:

1. The regulation permits public officials to participate in decisions to set a salary for a member of their immediate family, if the member of his or her immediate family is the only person in a job classification or position.
2. The regulation refers to hiring and firing, but not appointments, by the public official.

To remedy this situation, staff proposes amendments to regulation 18705.5 to declare material the financial effect of a decision by a public official that has a "unique" financial effect on a member of the official's immediate family; and to include "appointments" as decisions which could have material financial effects on the public official or a member of his or her immediate family.

II. Background

The purpose of the conflict of interest provisions of the Act is to ensure that public officials do not participate in governmental decisions in which they have a financial interest. The following scenarios raise policy questions which staff recommends regulation 18705.5 be amended to address.

Current Advice

- In 1997, the executive director of the Victor Valley Community College made a decision to significantly increase his spouse's salary. His spouse was a manager at the college and the only one in her classification. The Enforcement Division was not able to pursue the case because the language of the regulation did not make the conduct a violation.
- In 1997, the mayor of Oakland appointed his spouse to an unsalaried position on the Oakland Port Authority. At the time, the Oakland City Attorney advised the mayor that he did not have a conflict of interest that prohibited him from making the appointment, even though his spouse received a cell phone, membership to an exclusive dinner club, and a car allowance as a result of the appointment. The city attorney based her advice on the language of the regulation, which refers to hiring and firing, but does not refer to appointing.

III. Proposed Regulatory Action

Commission staff proposes amending Regulation 18705.5, subdivision (b) as follows:

“The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family, which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official's immediate family is only person in the job classification or position.”

How the Change Addresses the Problem

By adding the word “appoint” to the regulation, the Commission would make it clear to a public official that it is unlawful for a public official to appoint the official or his or her spouse to a position that is salaried, or that is unsalaried but offers monetary

benefits. By adding the suggested language to the end of the regulation, the Commission would make it clear to a public official that it is unlawful for a public official to increase the governmental salary of a member of his or her immediate family, when the family member is the only individual in the job classification or position.

IV. Recommendations

Staff recommends that the Commission approve the proposed amendments to regulation 18705.5 for notice for adoption at the May Commission meeting.